



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2022-0605; FRL-11128-02-R6]

Air Plan Approval; Arkansas; Excess Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA, the Act), the Environmental Protection Agency (EPA) is approving two revisions to the Arkansas State Implementation Plan (SIP) submitted by the Governor on May 12, 2022, and November 1, 2022. These SIP revisions were submitted in response to EPA's June 12, 2015, finding of substantial inadequacy and SIP call concerning excess emissions during periods of startup, shutdown, and malfunction (SSM) events. EPA is approving these SIP revisions and finds that the revisions correct the inadequacies identified in Arkansas' SIP in the June 12, 2015, SIP call.

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. **EPA-R06-OAR-2022-0605**. All documents in the docket are listed on the <https://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: James E. Grady, EPA Region 6 Office, Regional Haze and SO₂ Section, (214) 665-6745; grady.james@epa.gov. Please

call or e-mail Mr. Grady above or call Mr. Bill Deese at 214-665-7253 if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” mean “the EPA.”

I. Background

The background for this action is discussed in detail in our July 21, 2023, proposed action (88 FR 47095). In that document we proposed to approve revisions to the Arkansas SIP which were submitted on May 12, 2022, and November 1, 2022, subsequent to EPA’s January 12, 2022, finding of failure to submit concerning excess emissions during periods of SSM.¹ We proposed to approve the removal of two SSM provisions identified as substantially inadequate in the June 12, 2015, SIP call.² Specifically, we proposed to approve the removal of Regulation 19.602-Emergency Conditions and Regulation 19.1004(H)-Malfunctions, Breakdowns, Upsets from the Arkansas SIP. We also proposed to determine that such SIP revisions correct the substantial inadequacies in the Arkansas SIP as identified in the June 2015 SIP call and in response to EPA’s January 2022 finding of failure to submit.

II. Response to Comments

The public comment period for our proposed approval and determination expired on August 21, 2023, and no adverse comments were received. We received one comment from Sierra Club and Environmental Integrity Project supporting removal of Regulation 19.602 and Regulation 19.1004(H) from the Arkansas SIP. Therefore, we are finalizing our action as proposed.

III. Final Action

¹ Findings of Failure to Submit State Implementation Plan Revisions in Response to the 2015 Findings of Substantial Inadequacy and SIP Calls To Amend Provisions Applying To Excess Emissions During Periods of Startup, Shutdown, and Malfunction, 87 FR 1680 (Jan. 12, 2022), available at www.regulations.gov, Docket ID No. EPA-HQ-OAR-2021-0863.

² 80 FR 33839 (June 12, 2015).

The EPA is approving the revisions to the Arkansas SIP submitted by the State of Arkansas on May 12, 2022, and November 1, 2022, in response to EPA's national SIP call of June 12, 2015, concerning excess emissions during periods of SSM. Specifically, we are approving the removal of Regulation 19.602 - Emergency Conditions and Regulation 19.1004(H) - Malfunctions, Breakdowns, Upsets of Rule 19 from the Arkansas SIP. We are approving these revisions in accordance with section 110 of the Act. EPA is also determining that these SIP revisions correct the substantial inadequacies in the Arkansas SIP as identified in the June 12, 2015, SSM SIP Action and in response to EPA's January 12, 2022, finding of failure to submit.

IV. Environmental Justice Considerations

As stated in the proposed action for informational purposes only, EPA provided additional information regarding potentially impacted populations living within Pulaski County as well as the State of Arkansas as a whole.³ As discussed in the proposal, this action is intended to ensure that all communities and populations across Arkansas, and downwind areas, receive the full human health and environmental protection provided by the CAA. The removal of impermissible automatic exemptions or impermissible affirmative defense provisions from the SIP is necessary to preserve the enforcement structure of the CAA, to preserve the jurisdiction of courts to adjudicate questions of liability and remedies in judicial enforcement actions and to preserve the potential for enforcement by the EPA and other parties under the citizen suit provision as an effective deterrent to violations. There is nothing in the record which would indicate that this action will have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

V. Incorporation by Reference

³ <https://www.census.gov/quickfacts/fact/table/pulaskicountyarkansas,AR,US/PST045222>

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is removing the incorporation by reference of certain sections of “Regulation 19” in 40 CFR 52.170, as described in section III of this Final Action. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for removal from the Arkansas SIP, have been removed from incorporation by reference by EPA into that plan, are no longer federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and incorporation by reference will be removed in the next update to the SIP compilation.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. § 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.
- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor

require such an evaluation. The EPA performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area by removal of an automatic exemption provision and an affirmative defense provision from the Arkansas SIP. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. § 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: October 16, 2023.

Earthea Nance,
Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart E – Arkansas

2. In §52.170, the table in paragraph (c) titled “EPA-Approved Regulations in the Arkansas SIP” is amended under the heading for Regulation 19 by:

- a. Removing the entry for Reg. 19.602 under the heading for Chapter 6; and
- b. Revising the entry for Reg. 19.1004 under the heading for Chapter 10.

The revision reads as follows:

§52.170 Identification of plan.

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(c) * * *

EPA-Approved Regulations in the Arkansas SIP

State citation	Title/subject	State submittal/effective date	EPA approval date	Explanation
Regulation No. 19: Regulations of the Arkansas Plan of Implementation for Air Pollution Control				
<p style="text-align: center;">* * * * *</p> <p style="text-align: center;">Chapter 10: Regulations for the Control of Volatile Organic Compounds in Pulaski County</p> <p style="text-align: center;">* * * * *</p>				
Reg. 19.1004	General Provisions	1/25/2009, 5/12/2022	3/4/2015, 80 FR 11573, [Insert date of publication in the <i>Federal Register</i>] [Insert <i>Federal Register</i> citation].	Reg. 19.1004(H) is no longer in SIP, [Insert date of publication in the <i>Federal Register</i>]
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[FR Doc. 2023-23256 Filed: 10/20/2023 8:45 am; Publication Date: 10/23/2023]